

# **EXHIBIT 38**

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### Blair Strip Steel Co, Adv. Pro. No. 07-02259-rdd

Blair Strip Steel Co (“Blair Strip”) filed the Declaration of Scott A. McDowell, its Chief Financial Officer. Mr. McDowell declares that “[t]o his knowledge” Blair Strip did not have knowledge of the Extension Motions. *Ex. 38(a), July 12, 2011 Declaration of Scott A.*

*McDowell* ¶ 6. Mr. McDowell further states that “Blair Strip did not receive electronic notice of any filings in either Delphi’s bankruptcy case or the adversary proceeding.” *Id.*

Contrary to the position taken by Mr. McDowell, Blair Strip was placed on notice of the preference actions by receiving relevant information advising that avoidance claims had been filed under seal and that the time to serve the complaints and summonses had been extended. In fact, on December 13, 2007, the Debtors filed a copy of the First Amended Disclosure Statement publicly with their Form 8-K (Docket No. 11388). The First Amended Disclosure Statement outlined in detail that preference claims were to be filed under seal, with service deferred until after the limitations period. Additionally, as a party listed on Ex. FFF of the Affidavit of Service for the solicitation of materials for the First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-In-Possession, Blair Strip was served with the Confirmation Hearing Notice, dated December 10, 2007. *See Ex. 7, January 11, 2008 Affidavit of Service—Ex. FFF (Docket No. 11974)*. The Confirmation Hearing Notice explicitly discloses that the Bankruptcy Court entered an order, dated December 10, 2007, approving the First Amended Plan Disclosure Statement. *See Ex. 17, Confirmation Hearing Notice, p. 1 (Docket No. 11974, Ex. F)*. The Confirmation Hearing Notice also provides that the Disclosure Statement is publicly available on the Delphi Legal Information Website, <http://delphidocket.com>, or by contacting the Creditor Voting Agent. *Id. at* ¶ 10. Accordingly,

Blair Strip was on notice of the First Amended Plan Disclosure Statement, which included references to the preference claims at issue.

Additionally, Blair Strip's current counsel, Jean R. Robertson of Calfee, Halter & Griswold LLP, was served with the First Amended Plan Disclosure Statement. *See Ex. 7, January 11, 2008 Affidavit of Service—Ex. GG (Docket No. 11974)*. While Ms. Robertson was admittedly not served with the First Amended Plan Disclosure Statement in her capacity as counsel for Blair Strip, but rather, as a representative of the law firm itself, to the extent that Ms. Robertson represented Blair Strip as of the date of service of the Disclosure Statement, her review of the document, coupled with her knowledge of the underlying business relationship between Delphi and Blair Strip, creates at least question of fact as to whether Blair Strip received or should have received notice of the preference claims at issue.

Furthermore, Ms. Robertson was electronically served with the Preservation of Estate Claims Procedures Motion (which Motion was filed as Docket No. 8905). *Ex. 11, August 10, 2007 Affidavit of Service—Ex. B, 2002 List, p. 3 of 20 (Docket No. 9039)*. Ms. Cook also received electronic service of the August 16, 2007 Preservation of Estate Claims Procedures Order (Docket No. 9105), which, among other things, (i) authorized the Debtors to file complaints in the adversary proceedings pertaining to avoidance actions under seal, (ii) stayed each adversary proceeding unless and until the Debtors made service of process on the respective defendants, and (iii) extended to March 31, 2008 the deadline under Federal Rules of Civil Procedure 4(m) by which the Debtors would have to serve process, so that the complaints would not be subject to dismissal under Federal Rule of Civil Procedure 4(m). *See Ex. 12, August 23, 2007 Affidavit of Service—Ex. B, 2002 List, p. 3 of 20 (Docket No. 9141)*.

Similarly, Ms. Robertson was electronically served with the subsequently filed (i) First Extension Motion (Docket No. 12922), *Ex. 13, March 4, 2008 Affidavit of Service—Ex. B, 2002 List, p. 3 of 21 (Docket No. 12970)*; (ii) First Extension Order (Docket No. 13277), *Ex. 14, April 1, 2008 Affidavit of Service—Ex. A, 2002 List, p. 3 of 21 (Docket No. 13315)*; (iii) Second Extension Motion (Docket No. 13361), *Ex. 15, April 16, 2008 Affidavit of Service—Ex. B, 2002 List, p. 3 of 21 (Docket No. 13415)*; (iv) Second Extension Order (Docket No. 13484), *Ex. 16, May 6, 2008 Affidavit of Service—Ex. A, 2002 List, p. 3 of 20 (Docket No. 13540)*; and Final Extension Motion (Docket No. 18952), *Ex. 4, October 7, 2009 Affidavit of Service—Ex. B, 2002 List, p. 4 of 22 (Docket No. 18967)*. Moreover, Ms. Robertson received an automatic ECF notice of the First Extension Motion and Second Extension Motion when those motions were filed on the docket. *See Ex. 18, February 28, 2008 ECF Notice of Electronic Filing, p. 13 of 63 (Docket No. 12922); Ex. 19, April 10, 2008 ECF Notice of Electronic Filing, p. 4 of 64 (Docket No. 13361)*. As with the First Amended Plan Disclosure Statement, Ms. Robertson received these Extension Motions and Extension Orders in her capacity as counsel for a different entity; however, to the extent Ms. Robertson represented Blair Strip as of the dates of these motions and orders, her notice of such, coupled with her knowledge of the underlying business relationship between Delphi and Blair Strip, creates at least a question of fact as to whether Blair Strip received or should have received notice of the preference claims at issue.

In summary, as this Court discussed during the July 22, 2010 hearing, the Disclosure Statement, combined with the defendants' knowledge that they had in fact received preferential transfers (and combined further with Blair Strip's potential knowledge of the Extension Motions and Extension Orders through Ms. Robertson), put the defendants on notice of the preference claim procedures at issue and on inquiry notice as to the need to monitor preference claim

developments. *Ex. 8, July 22, 2010 Transcript, pp. 150-153. See also In re TWA Inc. Post Confirmation Estate*, 305 B.R. 221, 227 (D. Del. 2004) (“[I]n large chapter 11 cases sophisticated creditors typically are well aware of prospects and risks of preference litigation. ... Thus, it seems unlikely that creditors could be surprised or caught off guard when such preference complaints are finally filed.”). Accordingly, Blair Strip cannot credibly deny being on at least inquiry notice that avoidance claims were filed and placed under seal and the summonses had been extended. Further, Blair Strip had every reason to anticipate that it was the target of one of those avoidance claims.

# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	)	
	)	
In re:	)	Chapter 11
	)	Case No. 05-44481 (RDD)
DPH HOLDINGS CORP, <i>et al.</i> ,	)	
	)	
-----X	)	
	)	
DELPHI AUTOMOTIVE SYSTEMS, LLC,	)	
	)	
Plaintiff,	)	Adv. Pro. No. 07-02259 [RDD]
	)	
	)	
v.	)	
	)	
BLAIR STRIP STEEL CO.,	)	
	)	
Defendant.	)	
-----X	)	

**DECLARATION OF Scott A. McDowell IN FURTHER SUPPORT OF (1) JOINDER OF BLAIR STRIP STEEL CO. TO MOTIONS (I) TO VACATE PRIOR ORDERS ESTABLISHING PROCEDURES FOR CERTAIN ADVERSARY PROCEEDINGS, INCLUDING THOSE COMMENCED BY THE DEBTORS UNDER 11 U.S.C. §§ 541, 544, 545, 547, 548, OR 549, AND EXTENDING THE TIME TO SERVE PROCESS FOR SUCH ADVERSARY PROCEEDINGS, (II) DISMISSING THE ADVERSARY PROCEEDING WITH PREJUDICE, OR (III) IN THE ALTERNATIVE, DISMISSING THE ADVERSARY PROCEEDING ON THE GROUND OF JUDICIAL ESTOPPEL; AND (2) REPLY BRIEF IN SUPPORT OF JOINDER OF BLAIR STRIP STEEL CO. TO MOTIONS (I) TO VACATE PRIOR ORDERS ESTABLISHING PROCEDURES FOR CERTAIN ADVERSARY PROCEEDINGS, INCLUDING THOSE COMMENCED BY THE DEBTORS UNDER 11 U.S.C. §§ 541, 544, 545, 547, 548, OR 549, AND EXTENDING THE TIME TO SERVE PROCESS FOR SUCH ADVERSARY PROCEEDINGS, (II) DISMISSING THE ADVERSARY PROCEEDING WITH PREJUDICE, OR (III) IN THE ALTERNATIVE, DISMISSING THE ADVERSARY PROCEEDING ON THE GROUND OF JUDICIAL ESTOPPEL (COLLECTIVELY, THE "MOTIONS")**

STATE OF PA )  
 ) ss.:  
COUNTY OF Lawrence )

Pursuant to 28 § 1746, Scott A. McDowell, declares as follows:

**Background**

1. I have been employed by Blair Strip Steel Co. ("Blair Strip") since February 1999 and am currently its Chief Financial Officer.

2. I work at Blair Strip's corporate offices, which are located at 1209 Butler Av., New Castle, PA 16101. I am familiar with the day-to-day operations, business, and financial affairs of Blair Strip.

3. I submit this declaration in further support of Blair Strip's Motion, and in accordance with the Bankruptcy Court's direction at the June 21, 2011 hearing.

4. I have personal knowledge of the facts set forth herein, and if I were called to testify, I would and could testify competently concerning those facts.

**Lack of Notice of Fourth Extension Motion and Other Pleadings**

5. To my knowledge, prior to December 2009, Blair Strip did not receive electronic notice of any filings in either Delphi's bankruptcy case or this adversary proceeding (the "Adversary Proceeding").

6. To my knowledge, Blair Strip never received, nor did it have knowledge of, any of the motions seeking, among other things, the establishment of procedures for the Adversary Proceeding, leave to file the Adversary Proceeding, and/or a stay of the Adversary Proceeding until service of process was effected.

7. To my knowledge, Blair Strip never received, nor did it have knowledge of, the Supplemental Motion Pursuant to Fed. R. Bankr. P. 7004(a) and 9006(b)(1) and Fed. R. Civ. P. 4(m) to Extend Deadline to Serve Process for Avoidance Actions Filed in Connection With Preservation of Estate Claims Procedures Order, dated October 2, 2009 (D.I. #18952) (the "Fourth Extension Motion"). A copy of the affidavit of service (D.I. #18967) with respect to the



Fourth Extension Motion is attached hereto as Exhibit A. Blair Strip is not listed anywhere on that affidavit of service. Nor, to my knowledge, did Blair Strip receive (1) the Fifteenth Supplement Case Management Order (D.I. #18839), dated August 26, 2009, which, I understand, scheduled the omnibus hearing date on which the Fourth Extension Motion was heard or (2) the Order (D.I. #18999), dated October 22, 2009, granting the Fourth Extension Motion.

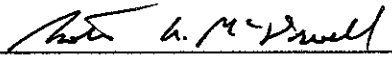
8. Moreover, at the request of counsel, I have reviewed the following additional affidavits of service and have confirmed that Blair Strip is not listed thereon:

Pleading	Pleading Docket Index Number	Affidavit of Service Index Number
Preservation of Estate Claims Procedures Motion	8905	9039
Preservation of Estate Claims Procedures Motion Order	9105	9141
Extension of Avoidance Action Service Deadline Motion	12922	12970
Extension of Avoidance Action Service Deadline Order	13277	13313
Postconfirmation Extension of Avoidance Action Service Deadline Motion	13361	13415
Postconfirmation Extension of Avoidance Action Service Deadline Order	13484	13540

9. Blair Strip was not aware of the Adversary Proceeding until it was served with a summons and the Complaint in December of 2009.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

July 12, 2011

/s/  \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Declaration was served through electronic transmission via the Court's CM/ECF system to all parties who are listed on the Court's Electronic Mail Notice List on this 12th day of July, 2011.

Respectfully submitted,

/s/ Jean R. Robertson

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